IN THE

SUPREME COURT OF THE UNITED STATES

Spring Term, 1979

No. 78-1515

PEOPLE OF THE STATE OF CALIFORNIA, JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself, A. Pearson, and all other such residents, similarly situated, Petitioner,

v.

COUNTY OF LOS ANGELES, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF CALIFORNIA COURT OF APPEALS SECOND APPELLATE DISTRICT

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Pro Se

April 2, 1979

"FOR EVERY WRONG THERE IS A REMEDY."
-Maxim of Jurisprudence

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The petitioner James E. Richards respectfully prays that a writ of certiorari to review the judgment and opinion of the Court of Appeals, State of California, Second Appellate District, entered in this proceeding on October 24, 1978.

OPINION BELOW

The opinion of the Court of Appeals, not published, appears in the Appendix hereto. No opinion was rendered by the Superior Court of the State of California, County of Los Angeles, nor the California Supreme Court in the course of denying hearing, December 20, 1979.

JURISDICTION

The judgment of the Court of Appeals, Second Appellate District of the State of California, was entered on October 24, 1978. A timely petition for rehearing was denied; and a timely petition for hearing before the California Supreme Court was denied without comment on December 20, 1978. By virtue of an extension of time granted by this Court March 9, 1979, this petition for writ of certiorari is filed within the extended due date of and including April 4, 1979. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

(1) Is the Complaint in this matter intelligible?

(2) If so, does calling it otherwise by the courts while consistently failing to enforce Rule 202C of the California Rules of Court deny petitioner due process and equal protection of law guaranteed by those clauses, U.S. Constitution, 14th Amendment?

(3) If so, may this Court feel obligated to correct the situation?

STATUTES INVOLVED

California Rules of Court, Rule 202C.

"Demurrers for uncertainty. Demurrers founded on uncertainty (CCP 430.10(g)) are disfavored. Where such are asserted, they must distinctly specify the grounds upon which they are made and indicate by reference to page and line the particular parts of the pleading that are uncertain."

U.S. Constitution, 14th Amendment.

"...nor shall any State deprive any person of life, liberty, or property, without due pro-

cess of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a case involving possible judicial prejudice in a case pertaining to a perhaps far-ranging environmental issue, directed against a government entity, which claims not to understand the pleadings presented at all.

The primary purpose of the suit is to obtain an order directing the County of Los Angeles "to evolve and adopt a plan to end air pollution within a reasonable time frame and without economic detriment to citizens."

As stated in the summary of the case in the application for extension of time in which to file petition for writ of certiorari, which was granted by this Court March 9, 1979,

> "Petitioner sued as individual and on behalf of class for relief from auto air pollutants on the grounds that such contaminants originating on respondent's properties (their streets and high-

> ways) constituted a nuisance (which was especially injurious to him), that the smog-laden conditions of the respondent's properties were themselves dangerous and caused damages for which respondents were liable, and on several other theories of litigation, including negligence, violation of California Health and Safety Code Section 39430 outlawing any harmful emanation from any source whatsoever, and others. The courts have found that they can't understand pertinent sections of the Complaint, although in violation of Rule 202C of the California Rules of Court, no one has ever explained what those sections are."

Before providing a more thorough examination of petitioner's Complaint, it might be well to acknowledge the Supreme Court's understanding of the entire application for extension

above menticned, and thank the Court for granting same, evidencing that petitioner is capable of writing a comprehensible court document.

One is aware that the Court is busy and has little time for reflection so perhaps a few paragraphs devoted to the background milieu from which the Complaint emerges will be useful.

BACKGROUND

Smog -- photochemical smog -- air pollutants hurt everyone: residue from air contaminants is thought to be present in tissue of all resident citizens, the functioning of the mind is sometimes reduced. On days called "unhealthful," one's activities are necessarily restricted, and those who have sensitive lungs and/or must exert themselves on those days can experience lung damage. Use of one's property may be impaired, and due to corrosive or otherwise detrimental action of air contaminents, personal and real property is damaged a minimum of $100 per year per American household on the average. For about 12 people in Los Angeles, the average number of daily fatalities conservatively attributable to auto emissions here based on several medically-published estimates,

air contamination obviously has a more forceful impact. For others, who have a predisposition to lung ailments, who have heart conditions, are pregnant, live in areas of high concentrated contamination, are very young or very old, breathing Los Angeles air is the equivalent of being forced to smoke a pack of cigarettes per day; for all, it is argued, air pollution abatement takes on an air of justice, not mere political convenience. One may not dictate what another must be subjected to, especially when that imposition violates an inalienable right, as a threat to life and property, as described above, surely does.

Air contamination is something which everyone is often lead to believe is controlled; yet smog is not controlled. The highly touted progress produced by the catalytic converter is ephemeral upon deeper investigation. It is a matter of changing definitions: Carbon dioxide is not called a pollutant. The "3-way" catalytic converter reduces all emissions to carbon dioxide and water vapor. Carbon dioxide is thus released into the atmosphere at a rate of 19.75 pounds for every gallon of gasoline combusted, with a resultant emission

in Los Angeles from motor vehicles of over 200,000,000 pounds per day.[1] This is not insignificant when one contemplates that CO2 is a rare gas in the atmosphere. Nitrogen and oxygen compose 99% of the air; CO2 accounts for only 0.033%. The result of this contribution to an atmospheric imbalance has been analyzed under the term "greenhouse effect," which is what some scientists say, on a runaway basis, caused the inhospitable Venusian atmosphere. Carbon dioxide released in earth's atmosphere warms it, by trapping the sun's reradiation from the earth. This has the effect, early scientists said, of increasing vegetation, in the long run, thus the name. However, it may be a misnomer; man is reducing the amount of vegetation which could be available to utilize the excess CO2; and at any rate, the amount of emissions exceeds the flora's ability to respond. The usual result of this warming trend (which has been noted, and corresponds exactly to prediction), is nearly unanimously admitted sufficient to consider the risk likely

[1]Based on estimates provided by Shell Oil, State and local pollution control boards.

of polar ice caps melting in the first decades of the next century substantially enough to flood low-lying coastal cities. However, recent published evaluations, which the petitioners and common sense support, propose that the effects of CO2 overdose will not be realized suddenly in 40 years. Rather, in ten years the globe will be committed to weather pattern changes due to CO2 accumulated by that time -- warmer air flows differently and the differences may be several degrees Fahrenheit and can vary by region -- one wonders if they've not been noted to a degree already -- with disastrous effects on agriculture product. Thus, at the tremendous rate with which the catalytic converter spews forth CO2, it is thought that "progress" is hardly the word to describe it.

Smog, or air pollution, since "smog" has been preempted to describe a particular kind of air pollution, is related to many aspects of daily life. It, like inflation, touches one in many sometimes-subtle manners. It is related to oil dependency, and is almost a measure of political and economic global instability. It is tied to the auto, to the energy resources

used to produce them, maintain them; it is related to agriculture as we have seen but even more immediately, contributes a few percentage points to the cost of food, because of pasture and farming land rendered unusable or damaged by smog. It affects housing: people build to escape it.

Bad news is never popular, but if it is the truth, the courts should set the example for being able to deal with it, if the need is present, as it is in this case. Planners may assure, politicians may smile, but it is only in the courtroom where justice purely is to be assured. Therefore, when a political agency says "it is controlled," and when auto manufacturers say "it is harmless," for the courts to respond to a challenge to those statements with "I can't understand" is an attack on a fundamental right.

But more along those lines in "Why This Writ Should Issue."

Petitioner filed prerequisite claim for filing an action for damages against the County of Los Angeles in December, 1974. Contrary to mandate of California Government Code Section 913, this claim was not acknowledged by the

County. Thirty claims, all identical except for name and address of respective claimants, were filed, then 300. A rejection by the County of the latter groups was received. Then, within the time limits for doing so, a complaint was filed in the County of Los Angeles Superior Court by petitioners for damages and or the court order as already discussed, on the grounds previously summarized.

No response from the County was made, so petitioner filed notice of default. The County next filed a short demurrer claiming no claims had been filed, no facts sufficient to state a cause of action stated, and the entire complaint and all of its parts were totally unintelligible.

Since petitioner knew claims had been filed and had been alleged filed in the Complaint, petitioner did not believe the other objections, either; and stated in opposition that respondent could not demur in this situation since there was a case in assumsit -- a common count -- that the defendant had a duty in conscience to perform to petitioner, also, that respondent was sufficiently apprised of

the issues to make a defense, and further opposition, including copies of the 331 claims stamped and time-dated by the County administrators, plus a wealth of appellate opinion that a respondent with knowledge presumed to be superior to the petitioner's could not demur on uncertainty (which term also includes ambiguity and unintelligibility), and that a demurrer on uncertainty was disfavored and was required to specify by page and line number what it was that was maintained uncertain. The County had not done that.

JUDICIAL MALPRACTICE

In the first hearing, the County of Los Angeles in the County Superior Court revealed — that is, the deputy counsel representing County revealed -- he had no trouble understanding Petitioner or the issues. However, the courtroom had been cleared by the judge of all spectators -- by readjusting the schedule so that the case was heard after all other business had been concluded and then after a noon recess, too. The County of Los Angeles maintained that hundreds of years of progress could not be destroyed and the County was making pro-

gress. Petitioner maintained that the destruction of Los Angeles was the respondent's usage and suggested the "progress" referred to was of the philosophy that if it took twenty years to build up the problem, it should take that long to solve it, and just as one did not expect a dentist to take four years to drill a tooth based on that same reasoning, we thought the time to effect a cure could be shortened and that we had a plan -- and surely the combined resources of the entire county of Los Angeles could come up with a plan -- that we'd like to see effected: in a reasonable time.

The demurrer was sustained in the empty courtroom, although with leave to amend.

Let it now be said that ALL further hearings on the matter were conducted in an empty courtroom after all other business had been rescheduled.

Petitioner did file for a change of venue which was denied.

But having 60 days to amend, petitioner timely did so, focusing on a brief phrase by the respondent at the time of the hearing that the complaint might not be "specific" enough. There-

fore, the Second Amended Complaint dealt with the medical terminology, listing page after page, of specific damages which petitioners, each and all of them, suffered as a result of various types of auto emissions, for example: decreased oxygen-carrying ability of the blood after exposure to common concentrations of carbon monoxide, increased risk of cancer due to present concentrations of NOx fumes, and the particular damages suffered by some members of the class, for example: the young, the old, the pregnant, noting that infant mortalities increased in rate in high smog concentration areas, babies born in those areas and in Los Angeles in general weighed less than normal, those already with cardio-pulmonary weaknesses experienced highest rate of crises during periods when both smog and temperature were highest, that public health researchers in New York and San Francisco -- cities which had better air quality than Los Angeles -- had produced studies -- copies of which we submitted -- that concluded that emission damages such as occurring in Los Angeles could reasonably be expected to occur at the rate of (this

is an interpretation) 12- 28 fatalities per day, with debilitating illnesses an order of magnitude 1000 times as great as that number in terms of lost man-days/day. Los Angeles County, it was alleged, as owner of the property on which these dangerous conditions originated, existed, and from which they obviously emanated was duty bound to correct the situation.

Again, neither facts nor allegations were contested as being untrue.

Respondents in their demurrer alleged no claims had been filed, no facts sufficient to maintain a cause of action had been stated, and that the Complaint as a whole and in all of its parts was uncertain, ambiguous, and unintelligible -- a carbon copy of their first response.

Despite the obvious error re claims as copies of them had been submitted with the Second Amended Complaint, demurrer was sustained "on the grounds of the demurrer," without further explanation.

THIRD AMENDED COMPLAINT

Suspecting that no amount of amendation

would be acknowledged understandable by the County of Los Angeles and the Superior Court, petitioner hit upon the idea of wording the complaint in the exact language of the law -- this could hardly be called unintelligible-- and California law is very generous in stating within the code that air pollution is detrimental to health and that much of it arises from the use of the automobile. The only remaining challenge was to make such statements meet the requirements of a cause of action -- a right of plaintiff violated by defendant.

So petitioner very carefully reconstructed the various causes of action to maintain some authoritative quote on the universal and particular effects of auto emissions suffered by petitioners, plus an allegation of the defendants being in some way responsible for those violations taking place, because that format was dictated by the definition of a cause of action:

> "A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong." (Code of Civil Procedure

Section 30).

To cite a general example, first, in the first cause of action, entitled "Negligence," petitioner stated in terms provided by the law that respondents owed but failed to keep obligation to petitioners' rights to life when respondent foresaw the types of damages to occur and which did occur. (See Appendix).

To be more specific and detail all the essential parts, the second cause of action is printed below. For this cause petitioner used Government Code Section 835 as a basis to maintain that defendant were liable for the smog-laden conditions of its property -- its streets and highways -- which caused detriment and harm. Section 835 was enacted specifically to bypass the sovereign immunity doctrine in certain situations. The full specifications of liability under Section 835 and the second cause of action are produced below.

> GOVERNMENT CODE § 835
>
> Conditions of Liability. Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff

establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

SECOND CAUSE OF ACTION

DANGEROUS CONDITION OF PUBLIC PROPERTY

(Govt § 830(ff))

I

-Dangerous Condition-

(1) "Air pollution ... is detrimental

to the health, safety, and welfare and sense of well-being of the people of California." (H. & S. 39010). Plaintiffs, each and all of them, are people of California; 28,000 suffer death or serious illness daily in Los Angeles due to auto fumes.

(2) "The emission of pollutants from motor vehicles is the primary cause of air pollution in many portions of the state"(H. & S. § 39081). Los Angeles suffers a severe smog problem, one of the ten worst in the United States, attributable to automobiles. These dangerous conditions originate on, and emanate from, Defendants' properties: the highways, streets and roads within the County of Los Angeles.

II

-Knowledge-

Defendants have received actual and constructive notice of such dangerous conditions since 1954 and previous (People's exhibit

2).

III

-Power to Remedy-

Defendants, each and all of them, are empowered and directed by explicit state policy to take all action necessary to provide citizens of California with clean air, including, but not limited to, restrictive air standards (H. & S. § 39012, Pub. Res. § 21001(b), (f)).

IV

-Opportunity-

The time since Defendants have become aware of the problem has been sufficient to provide a solution.

V

-Failure to Remedy-

Damages continue to this day.

VI

Plaintiffs include those who drive -- claimants joining Plaintiffs under assertion of right to reform Government or condition of involuntary servitude to transportation system -- and those who do not

operate motor vehicles, either by choice or through conditions.

VII

-Compliance with Govt. § 945.4-

Cause One Section VII, incorporated herein.

** **

Has not a cause of action been stated that conforms to the requirements of Section 835?

Has not the first section of the above cause established that plaintiffs are damaged from a condition of the defendant's property?

Does not the second section allege the notice requirement?

Do not sections 3 and 4 constitute a substantive allegation of adequate notice? (Truth of which is for the jury to determine).

Does not the fifth section emphasize continuous damages and failure to remedy?

Knowing the objections to be faced, the Complaint was written in the most basic, clear and concise terms possible and to use language whose intelligibility, if anything, is mandatory.

In helping the Court to determine further whether the court could reasonably have been

expected to understand this, Petitioner would like to offer the signatures of 10 high school graduates out of ten asked, who declared they understood the cause of action detailed above, and, moreover, saw that it matched the requirements of Government § 835. Thus it should have been evidenced that the cause of action in its parts and its theory or theme are readily intelligible. More signatures could be added if time permitted.[1]

In like manner for Trespass, Violation of Health and Safety Code Section 39430 (the allegstion of a violation of Code itself constituting a cause of action), and other causes of action, petitioner took the language directly from the law or other well-known books, including defendant's own publications, and made use of the accepted legal definition of "cause of action," "one right of plaintiff violated by defendant," to fit the facts into the format.

In addition, petitioner alleged timely compliance at least once with the Torts Claims Act, which requires claims to be filed with a public entity before a court action for

[1]Appendix

damages can be undertaken against them and specifies a statute of limitations within which to file a complaint should the claim be rejected.

IMPROPER DEMURRER

The respondent demurred again, with a change: with two objections, of no cause of action and unintelligibility "in all of its parts," but with no points and authorities in support thereof. The points and authorities that were included dealt exclusively (an important point of emphasis) with miscitations and misquotations of the claims statute. The record will show that the actual cases cited are opposed to respondent's contentions and confirm petitioner's position that claims were not essential to have been proven filed in a complaint (which they were anyway) and that they were not necessary at all for remedies sought via injunction. Thus the demurrer was defective in form as well as substance.

The deputy attorney who wrote it did not show up at the hearing after our opposition, an elaboration of previous oppositions and an accusation of a sham defense being levelled against him and calling for summary judgment; and the substitute attorney said nothing beyond

an explanation of why the other attorney was absent, not a word. Yet, the demurrer was sustained ("without further leave to amend.")

FIRST APPEAL

Petitioner appealed.

There were to be two appeals.

Responding to the first appeal, respondent changed all previous arguments and stated that even if the trial judge did err in making a judgment, the complaint could still be voided on other, valid grounds. Then respondent cited a provisions by a law using a numbering system unfamiliar to petitioner that stated the State had primary responsibility for controlling auto pollution, while the county retained primary responsibility for controlling stationary sources. On examination, our response was that the law respondent cited was a revision of the law in effect when this suit was brought, and that legislators in making the revisions had specifically exempted such suits from any effects of the revisions. In that previous law, county and state shared responsibility for "air pollution control," and the county was permitted to enact stricter standards than the state's. But even so, it

was argued by petitioner, auto emissions standards were not the only possibility or only issue -- what was being talked about was the condition of the defendant's own properties and surely they retained responsibility in that regard -- to argue otherwise would be absurd: one could construct a parking garage without adequate ventilation, and if someone had a heart attack while waiting for an elevator, blame the omission on the state!

So add-on devices and stricter auto emission standards for automobiles were not necessarily at issue, and that was the context within which the revised code made its deliveations.

The Appellate Court did not rule on the merits of the case but found that although the Superior Court had sustained demurrer without leave to amend further, it had not formally dismissed the action, and therefore the Appellate Court lacked jurisdiction, dismissing the appeal (although it is common to deal with the substantial issues at that time anyway).

SECOND APPEAL

Petitioners went back to Superior Court, obtained dismissal, and refiled appeal.

Now it should be noted that because of exhorbitant copying costs -- up to ten times competitive rates -- not to mention costs for the original -- charged by County in preparing a record for transmittal to the Appellate Court, pertinent arguments and history were omitted from the appeals.

Nevertheless, petitioner presented a clear and concise record to the Court of Appeals, whcih was much the same as the first appeal, and a concise brief, which fairly summarized both sides of the basic issues. (Appendix.) The County this time did not respond at all.

The Second Appellate District said petitioner in propria persona had no business in court, correctly summarized the intent of the suit, examined the record, found a one-page document superfluous, while the demurrer was missing, found it, found it as summarized in the brief. Examined claims issue in detail, incorrectly furthered one of respondent's misquotations. Did not analyze uncertainty issue at all. Then affirmed judgment for uncertainty.

In more detail, the Appellate Court began by saying that Petitioner in propria persona

"poses insurmountable problems of procedural and substantive law." Court incorrectly lists the contents of the record before it; it also includes Plaintiff's Notice Designating Record. Had this been read, it would have been realized that the one-page superfluity (out of 102 pages in the record) was not specified by Petitioner; it was a clerk's error, like misspelling petitioner's name -- easier to make than correct, and for all Petitioner suspected by that time was intentional). Demurrer probably should have been included; respondent supplied same in first appeal; petitioners considered error to be shown by supplying clear Complaint and drawing attention to uncertainty issue. Test on certainty will ultimately rest on Complaint, anyway. Court notes points and authorities deal "primarily" (why does Court ignore defects of demurrer -- "exclusively" would have been accurate -- and acknowledged demurrer for uncertainty was fatally defective). Detailed analysis of claims issue, says statute in itself has certain requirements; petitioner has not alleged and proven compliance, thus, like respondent, misquoting C.A. Magistretti Co. v. Merced Irrigation District (1972) 27 Cal. App. 3d 270, 274-75, which states complaint

must allege or prove compliance; a thorough examination of the record would have discovered proof, as copies of the claims were included and were the forms supplied by the County, receipted by them, and the filing date on the first complaint indicates the time of commencement of proceedings -- all and more argued in the record before the Court in respondent's Opposition to Demurrer to Third Amended Complaint, which concludes, as Court did, that claims not necessary for injunction. After five pages of strictly criticizing petitioner without one word for respondent yet without finding any fatal defects in petitioner's case, the Appellate Court, without any analysis of the central issue, unintelligibility, affirmed dismissal because of it.

The case cited by the Court in support of its affirmation was completely at loggerheads with the treatment of this case by the courts. In that case every word and phrase change in successive complaints was noted -- even over the objections of attorries who wrote the complaint; -- and explanations given as to why they did not meet requirements of specific grounds for demurrer (which wasn't on Calif. Code

of Civil Procedure 430.10(f), uncertainty, but C.C. P. 430.10 (g), failure to specify whether contract was oral or written.

At this point petitioner begins to feel justified in questioning the integrity of the courts; a petition for rehearing which contained the requirements of California Rules of Court 202C was denied, and a petition for hearing before the California Supreme Court raising questions about due process and equal protection in the state and federal context was denied without comment.

WHY THIS WRIT SHOULD BE GRANTED

(1) Complaint in this matter is manifestly clear and intelligible to average high school graduate.

God help us if we forbid a layman to write a complaint in this country. Just because it may deal with a serious issue, and may be innovative in applying the law (but perhaps that is auspicious -- after all, the problems we are facing have not responded to run-of-the-mill solutions), certainly is no means to dismiss it.

Respecting the backgrounds of the reader, lawyers were not always allowed to practice in this country. It didn't take bar member-

ship to bring a case in the judicial system; lawyers for hire were sometimes considered scoundrels; if one can say that legal studies aid administration of justice, once can also say such expertise can obstruct it. In any event, for the Court to start an opinion on the impropriety of being in pro per, to make its criticism tougher, or to say that the rules governing the can be suspended to inhibit the layman, as disregarding 202C has done, is to raise the law of the Country ABOVE the people, no longer of, by, and for them.

Petitioner Richards has a master's degree in business from a prestigious institution, an invitation to submit stories to Esquire Magazine, and 10 high school graduates' permission to use their names, out of 10 asked, attesting to their understanding of the second cause of action and, further, state, relying on the description of a cause of action as given previously herein, state that they have read Section 835 of the Government Code and see where the Cause meets the requirements of that Section for stating a cause of action. (Appendix). A medical doctor -- a customer of petitioner and the only one known locally and asked -- found it readily intelligible and

said his name could be used with it in any way wanted: Dr. David Gura, M.D., 2526 Washington Avenue, Santa Monica, CA (213) 829-1009; and of the three to four lawyers consulted in this matter, all say they understand it, some requiring the allegation of wrongdoing -- the failure to remedy -- to be pointed out to them in the second cause, but do not want to go so far as to be quoted on it for fear of contradicting a previous court, of jeopardizing their partnership, or because they're not getting paid for it.

You should see the shock of some of the lesser educated people when told that the courts claim they can't UNDERSTAND this, and it is truly heart-rending when you see some of them swallow like cyanide their disappointment with the system as a matter of habit.

Plainly, an error was made in dismissing this case on "unintelligibility."

(2) The Appellate Court admitted parts were intelligible, but continued lower court's error in refusing to specify, in violation of Rule 202C, California Rules of Court, which parts were unintelligible or lacking.

Whereas the Superior Court held that all of the Complaint was unintelligible, Appellate

Court by its analysis found some parts of it intelligible; and abrupt dismissal on the grounds of certain unnamed central portions unintelligibility is also suspect. An explanation of what it is that is "unintelligible" should be demanded. Rule 202C entitles petitioners to this. It is understandable why this rule exists. It is not believed that 202C is routinely ignored; petitioners allege it was suspended in this case alone. It is thought that to admit understanding, admits the case; and the judges refuse to do this. Obviously, petitioner feels this should be called an extreme abuse of discretion. If petition is intelligible, flagrantly calling it the opposite denies petitioner due process and equal protection, guaranteed by both the Constitution of California[1] and the U.S.'s 14th Amendment, extending into state matters.

[1]In inverse condemnations, California Constitution calls for compensation established by jury. For validity of inverse condemnation parallel, see Barron v. Mayor & City Council of Baltimore 32 US (7 Pet) 243 (1833), (prior to 14th Amendment).

(3)Now are we to assume that judges are too weak to enforce the law in this state or that the County exerts too much influence in the courts, a dialectic of the individual existing for the convenience of the state? These are not idle issues.

When up to 28 people die in Los Angeles daily due to vehicular emissions and myriad lesser injuries and damages are observed, including a volume of gas endangering the earth's atmospheric balance, one might say that someone else should bring these matters up. Perhaps that is always a challenge to be dealt with, but petitioners think that individual citizens are best suited -- other than perhaps the President -- to blow the whistle on an unacceptable policy. A bureaucrat might not be willing to risk his tenure; an established environmental organization may be tamed by repeated contact with the opposition, have its own internal bureaucracy, may not have a specific proposal to improve the situation, as we do, and thus feel unworthy to criticize, etc.; yet other groups are beginning more vocally to decry the CO2 hazard. But what is solely relevant is that a wrong exists, and petitioners come to the courts for something to be done

about it.

And not half-done either. Petitioners are dismayed that the courts apparently are in despair about the citizens' ability to cope with the situation, display reluctance to accept possibly essential change without seeing -- or even listening to -- suggestions of what that change might entail, and more particularly, are willing to continue a wrong for the sole convenience of established selfish interests.

It is petitioners' belief that the courts should have more faith in citizens' ability to comply with the necessities of the law.

Harmony with justice is not hardship.

So please, please reaffirm our faith in the system by making sure this case gets a fair and open hearing.

Otherwise, a basic right is usurped: which further demonstrates the evil of big government, a judiciary not separate in fact from other branches, in de facto collusion with the government, not maintaining objective neutrality, dismissing basic guarantees: such are repugnantly short-sighted. If a single structure or manufacturer were involved for 28 lives per day the outcry would be enormous, but here we have the perceived self-interest of the majority.

Others' lives are intruded and oppressed upon, And it is presumed to be their willing sacrifice -- even their public duty! It is not. Petitioner, for one, states that he does not have any interest in the future of the automobile (although auto workers must be cared for), does not see driving as a necessity (states make much to-do, after all, about driving being a privilege not a right), sees many possibilities of order and profit not based on an economy riding on oil-burning transportation.

Thus, smog is not only a political issue. But politics are ruling in the courts' treatment of this case. Insisting that the present air-pollution abatement policy is infallible is pap --we come before the bar for justice. Petitioners' lives and properties are being taken in a substantial degree; a matter of justice is involved: these damages are not accidents, they are man-made; perhaps they are done without malice -- but are from negligence. Respondents have a role as protector, and by being as source, albeit perhaps secondary one, of these pollutants, carry a double obligation to correct the situation.

Petitioners have the right to weigh the ad-

vantages and disadvantages of the situation and decide if they are deprived wrongfully; and if they do so, they have a right to argue the case (before a jury of their peers in California) -- in a public tribunal. Yet this basic act is being denied to petitioners.

What are the consequences of these denials of rights?

It isn't as if a parking ticket error were involved. At least a dozen deaths per day, 1000 times that number incapacitated by disease, traffic problems, higher prices (auto, agriculture), serious threat to agriculture are all involved; and petitioners think they're entitled to every means available to deal with the issue.

But we have been denied justice in a very basic sense, by judges' one-sided leniency to claims of unintelligibility which is patently demonstrable to be false -- at least not fairly argued. What should our faith in the judicial system be after this experience? Should we have faith in it? Should we seek recourse outside it? Destroy it? Transcend it? Beware the power of the individual! But why have courts? Are they not to fill a need? Are not the two sides to be weighed equally? For arrogance, hypercriti-

cism, defensiveness, unfair dealing, favorites playing, unfair dealing, petitioners could go to 50% of the car dealers, encyclopedia salesmen, auto mechanics, etc. Why have judges?

CONCLUSION

We may be "mere individuals," but we do think claiming the Complaint is unintelligible is an insult. In the interests of furthering fundamental fairness on a critical and timely matter of mutual importance, we ask that this petition for writ of certiorari be granted by this highest Court.

Respectfully submitted,

April 2, 1979

Pro Se

49 Sunset Avenue #1
Venice, CA 90291

APPENDIX

Page

Petitioners' Complaint,
Third Amended,
First Cause of Action..... A 2
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Respondent's Demurrer..... A 9

Petitioners' Second Appeal..... A20

Appellate Opinion..... A30

High School Graduates' Support
of Complaint's Intelligibility

FIRST CAUSE OF ACTION
-NEGLIGENCE-

I
-Capacity to Sue-

I am a citizen, a resident of Los Angeles; I am also a member of a group, the residents of the County of Los Angeles, whose number is certain, ascertainable, and adequately noticeable. I am typical and respresentative of that group in median age, income, and pertinent demographic characteristics.

II
-Statement of Rights-

We have rights. Among them: to life (Preamble to U.S. Constitution, California Constitution, Art. 1, Section 1), healthful environment (Pub. Res. Section 2100 (b)), and freedom from nuisance (Civ. Sectiion 3479, 3480).

III

-Duty of Defendant-

"The Government owes the duty of protection to the people in the enjoyment of their rights...." (Cohen v. Wright (1373) 22 C.293). This is the purpose for which government is instituted (Calif. Const. Art. 1, 2). The county is a legal subdivision of the state. The Board of Supervisors of Los Angeles County is obliged by Article Vi, Section 25 of the Los Angeles County Charter to perform the duties prescribed by general law. The Constitution is the basic and fundamental law.

IV

-Damages-

(1) At least 28 persons die daily in Los Angeles County due to auto fumes. (Exhibit 1). Another 28,000 are too ill to function normally. Each individual, including Plaintiff, carries a pollution burden--tissue residues of pollutants. The common results of exposures include decreased mental capacity, increased cancer rates, and increased susceptibility to many other diseases.

(2) Polluting automobiles mainly are operated by Los Angeles County residents within the county.

V

-Proximate Cause:
Failure to Take Action-

The Board of Supervisors is empowered by H. & S. Section 39012 to establish restrictive air standards, and is directed by State policy to take all action necessary to provide the citizens of this state, including Plaintiffs, with clean air (Pub. Res. Section 21001 (b), (f)). Yet although they have been aware of the dangers of smog since 1954 (People's Exhibit 2), they have not effected this action, with damages resultant as described above.

VI

-Jurisdiction-

"Obligation to guard and enforce every right secured by federal constitution rests of state courts equally with federal courts." Mooney v. Holohan (1935) 55 S. CT. 340, 294 U.S. 103, 79 L. Ed. 791, 98 ALR.

406, rehearing denied 55 S. Ct. 511, 294 U.S. 732, 79 L. Ed. 1261.

VII

-Compliance with Claims Statute (Govt. Section 945.4)-

In compliance with Govt. Code Section 945.4 requiring claims to be filed prior to action against county, on December 24, 1974, January 22, 1975, and February 28, 1975, a total of 331 claims were filed with the Board of Supervisors on this matter and selected copies are already on file herein. Yet damages have occured,(sic) are still occuring, (sic) and will continue to occur unless certain action is taken by this court.

FIFTH CAUSE OF ACTION
VIOLATION OF H. & S., SECTION 39430

I

As in previous Cause.

II

"Air pollution...is detrimental to the health, safety, and welfare and sense of well-being of the people of California" (H. & S. Section 39010). Such contaminants are detrimental to property and material as well (Source: National Academy of Sciences Report to 93rd Congress on Effects of Air Pollution).

III

-Source-

"The emission of pollutants from motor vehicles is the primary cause of air pollution in many portions of the state" (H & S Section 39080). In Los Angeles County, 50 to nearly 100% of contamination by CO, NOx, HC, and particulates emanate from automobiles and Defendants' properties.

IV

-Law-

"A person shall not discharge from any source whatsoever such quantitites of air contaminants, smoke, or other material which causes injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which cause injury or damage to business or property" (H. & S. Section 39430, 24243).

V

-Definition-

"'Person' includes any person, firm, association, organization, partnership, business trust, corporation, company, district, county, city and county, town, the state, and any of the agencies and political subdivisions of the state, or such entities" (Govt. Section 12640, "Environmental Actions.")

VI

A County's Violation of Air Resources Act H. & S. Section 39430, May Be Enjoined; damage unnecessary (H. & S. Section 39437)

"Any violation of any provision of this article or of any order, rule or regulation of the regional board may be enjoined on a civil action brought on the name of the people of the state of California, except that Plaintiff shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss" (H. & S. Section 394337).

VII

As in previous Section VII, with addition: "Unless motor vehicle exhaust is successfully controlled, the Los Angeles area cannot realize the restoration of acceptable air quality." (1974 Profile of Air Pollution Control, County of Los Angeles Air Pollution Control District, Los Angeles, p. 41.)

JOHN H. LARSON, County Counsel
WILLIAM D. ROSS, Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1927

Attorneys for Defendant
COUNTY OF LOS ANGELES

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES E. RICHARDS, a resident of the County of Los Angeles, on behalf of himself and all other such residents similarly situated,	)NO. CA 00218
	)NOTICE OF HEARING
	)ON DEMURRER TO
	)THIRD AMENDED
	)COMPLAINT;
	)DEMURRER TO THIRD
Plaintiff,	)AMENDED COMPLAINT;
	)AND MEMORANDUM

vs.	)OF POINTS AND
	)AUTHORITIES
COUNTY OF LOS ANGELES, et. al.,	)Date: March 17, 1976
	)Time: 9:00 a.m.
	)Dept: 80
Defendants	)

TO: PLAINTIFF JAMES E. RICHARDS, IN PRO PER:

NOTICE IS HEREBY GIVEN that a demurrer to the third amended complaint on file herein has been set for hearing on Wednesday, March 17, 1976, at 9:00 a.m. or as soon thereafter as counsel can be heard, in Department 80 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California 90012.

Said demurrer will be made on the grounds (1) the entire third amended complaint, and each of the seven causes of action contained therein, fail to state facts sufficient to constitute a cause of action against this answering defendant; and (2) the entire third amended complaint, and each of the seven causes of action contained therein are uncertain. The demurrer will be based upon this notice, the accompanying demurrer, the memorandum of points and auhtorities and such other evidence as counsel may produce at time of hearing.

DATED: March 1, 1976

JOHN H. LARSON
County Counsel

By
WILLIAM D. ROSS
Deputy County Counsel

DEMURRER

Defendant County of Los Angeles demurs to the third amended complaint on file herein on the following grounds:

1. The entire third amended complaint, and each of the seven causes of action contained therein fail to state facts sufficient to constitute a cause of action against defendant County of Los Angeles; and
2. The entire third amended complaint, and each of the seven causes of action contained therein are uncertain.

WHEREFORE, defendant County of Los Angeles prays that this demurrer be sustained without leave to amend, that plaintiff take nothing by his third amended complaint, that this responding defendant have judgment for its costs, and for such other and further relief as this court deems just and proper.

DATE: March 1, 1976
JOHN H. LARSON, County Counsel

WILLIAM D. ROSS, Deputy County

By_____

WILLIAM D. ROSS, Deputy
County Counsel
Attorneys for Defendant
COUNTY OF LOS ANGELES

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

Under Government Code Section 900 et. seq., plaintiff is required to plead and prove compliance with the Government Code's provisions concerning the presentation of claims to a public entity. Compliance with the claim presentation provisions are conditions precedent to an action against either an employee of a public entity, or the public entity itself.

As shown on the face of the third amended complaint on file herein, and as shown by the following points and authorities, plaintiff has not met his burden of pleading compliance with the claim presentation provisions.

Additionally, it is evident from the face of the plaintiff's third amended complaint, said complaint fails to state facts sufficient to consititue a cause of action against defendant County of Los Angeles and is uncertain and ambiguous in its entirety.

POINTS AND AUTHORITIES

I

COMPLIANCE WITH THE CLAIM PROVISIONS IS A PREREQUISITE TO ANY ACTION FOR MONEY OR DAMAGES

AGAINST A PUBLIC ENTITY OR EMPLOYEE OF THE PUBLIC ENTITY.

Government Code Sections 905, 945.4 and 950.2; Neal v. Gatlin (1973) 35 C.A. 3d 871; Burgdorf v. Funder (1966) 246 C.A. 2d 443.

II

PLAINTIFF HAS THE BURDEN OF PLEADING AND PROVING COMPLIANCE WITH THE CLAIMS PRESENTATION REQUIREMENTS AND THAT A CLAIM WAS PRESENTED AND REJECTED WITHIN THE TIME PRESCRIBED BY GOVERNMENT CODE SECTIONS 911.2 AND 911.4.

Magistretti (C.A.) v. Merced Irrigation Dist. (1972) 27 C.A. 3d 370, Willis v. Reddin (1969) 418 F. 2d 702.

III

PLAINTIFF HAS THE BURDEN OF PLEADING OR PROVING COMPLIANCE WITH THE CLAIMS PRESENTATION REQUIREMENTS.

Neal v. Gatlin (1973) 35 C.A. 3d 371, Tietz v. Los Angeles Unified School District (1969) 238 C.A. 2d 905.

IV

FAILURE TO INCLUDE THE NECESSARY

ALLEGATIONS RENDERS THE COMPLAINT SUBJECT TO GENERAL DEMURRER.

Neal v. Gatlin (1973) 35 C.A. 3d 871; Burgdorf v. Funder (1966) 246 C.A. 2d 443.

"A CLAIM RELATING TO A CAUSE OF ACTION FOR DEATH OR INJURY TO PERSON...SHALL BE PRESNTED...NOT LATER THAN THE 100TH DAY AFTER THE ACCRUAL OF THE CAUSE OF ACTION.

Government Code Section 911.2.

"ANY SUIT BROUGHT AGAINST A PUBLIC ENTITY ON A CAUSE OF ACTION FOR WHICH CLAIM IS REQUIRED TO BE PRESENTED...MUST BE COMMENDED:

"(1) IF WRITTEN NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 913, NOT LATER THAN SIX MONTHS AFTER THE DATE SUCH NOTICE IS PERSONALLY DELIVERED OR DEPOSITED IN THE MAIL."

"(2) IF WRITTEN NOTICE IS NOT GIVEN IN ACCORDANCE WITH SECTION 913, WITHIN THE TWO YEARS FROM THE ACCRUAL OF THE CAUSE OF ACTION."

Government Code Section 945.6.

Plaintiff has alleged that several claims were filed with the Board of Supervisors in

compliance with Government Code Section 945.4 (paragraph 7 of plaintiff's first cause of action). Yet, upon examination of this paragraph of plaintiff's third amended complaint, as well as the balance of said complaint, it becomes apparent that plaintiff has failed to specifically allege that the filing dates of his various claims and subsequent complaint were made within the time limits prescribed by Government Code Sections 911.2 and 945.6 cited above. Thus, although plaintiff alleges compliance with Government Code Section 945.4, plaintiff's compliance with the remaining portions of the Tort Claims Act is not apparent from the face of his complaint. Defendant has no way of ascertaining timely compliance until plaintiff pleads the specific dates on which his claims were rejected; and his complaint was filed. It is noted that plaintiff has not cured this deficiency in his complaint three previous attempts all on file with the court herein.

V

PLAINTIFF'S THIRD AMENDED COMPLAINT AND EACH OF THE SEVEN CAUSES OF ACTION CONTAINED THEREIN, REVEAL A COMPLETE FAILURE BY PLAINTIFF TO STATE OR ALLEGE FACTS SUFFICIENT TO CONSTITUTE A

CAUSE OF ACTION AGAINST DEFENDANT COUNTY OF LOS ANGELES. SUCH IS A REQUIREMENT THAT MUST BE SATISFIED IN THE COMPLAINT, AND IN EACH CAUSE OF ACTION THEREIN.

Code of Civil Procedure

Section 425.10(a).

VI

PLAINTIFF'S THIRD AMENDED COMPLAINT IS AMBIGUOUS AND UNINTELLIGIBLE.

Plaintiff's third amended complaint, and each of the seven causes of action contained therein, is uncertain in that there is complete doubt and confusion as to what plaintiff means by the facts he has alleged. Further, the amended complaint, and each of the causes of action set forth therein, is ambiguous in that all of the allegations contained therein are not easy of comprehension and are not free from reasonable doubt as to their meaning.

Lastly, but not least, it is suggested that the entire third amended complaint, as well as each of the seven causes of action contained therein, is unintelligible in that same does not represent a coherent and orderly expression of facts that provide meaningful understanding to others.

CONCLUSION

By reason of the foregoing, it appears manifestly clear that this responding defendant's demurrer should be sustained without leave to amend as to the entire third amended complaint, and as to each of the seven causes of action contained therein.

DATED: March 1, 1976

Respectfully submitted,

JOHN H. LARSON
County Counsel

By
WILLIAM D. ROSS
Deputy County Counsel

WDR:mlr

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA, James E. Richards, a resident of the County of Los Angeles, on behalf of himself, A. Pearson, and all other such residents similarly situated, Plaintiff and Appellant, V. COUNTY OF LOS ANGELES, Defendant and Respondent.	) 2d CIV. 52919) (Superior Court) CA 00218

--0--

Appeal from the Superior Court
Los Angeles County
HONORABLE THOMAS W. LESAGE, JUDGE

--0--

James E. Richards
555 Rose Ave. - B
Venice, Ca. 90291
839-3535
In Propria Persona

STATEMENT OF THE CASE

Based on the fact that Los Angeles smog kills 28 people each day and that smog residue is detectable in the tissue of every resident of Los Angeles, plaintiffs from December 24, 1974 through February 28, 1975 filed a total of 331 claims aginst the defendants for either timely, efficient protection against smog or for recovery of damages. Refusing to accept responsibility, defendants denied the claims. Subsequently, plaintiffs filed suit in Los Angeles Superior Court.

This is a class action and an individual seeking relief from smog by means of a court order directing the County of Los Angeles to evolve and adopt a plan to end vehicular smog within a reasonable time frame and without economic detriment to citizens, or to pay damages for the injuries accruing.

The defendants demurred, and were sustained, contending that the plaintiffs had filed no claims and that none of the complaint culd be understood and that no cause of action had been stated.

In their opposition, plaintiffs noted that the allegations required by the Torts Claims Act were fulfilled in Section VII of the First

Cause, Third Amended Complaint (lines 28-32 and 1-5, Clerk's Transcript, pages 2 and 3 respectively) and that the language of the complaint in roughly 2/3 of the instances was taken directly from the language of the law itself and that the complaint stated rights of plaintiffs violated by denfendants, causing injury.

The case was appealed. At that time the defendants based their response on a claim that a revision of the law removed from the County responsibility for motor vehicle pollution. This case was instituted prior to the enactment of those revisions, however, and the legislators specifically exempted such suits from being affected by the revisions. Furthermore, the plaintiffs asserted that control over and the condition of the County's own property was at issue, not merely motor vehicle pollution.

The Second Appellate District dismissed the case noting that no final judgment had been issued by the lower court. They did not rule on the merits of the case.

Plaintiffs went back to Superior Court, got final judgment, and refiled this appeal.

We realize the scope of the answer to this problem may quite possibly be large.

Nevertheless, the scope of the problem is definitely large and severe.

Therefore, we want the law enforced.

ARGUMENT AND THE LAW

I

THE DEFENDANTS, IN THEIR STREETS AND HIGHWAYS, ARE IN ILLEGAL DISCHARGE OF HARMFUL AIR CONTAMINANTS

> "A person shall not discharge from any source whatsoever such quantities of air contaminants, smoke, or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which cause injury or damage to business or property" (Health and Safety Section 39430, 24243).

COUNTY AS PERSON

> "'Person' includes any person, firm, association, organization, partnership, business trust, corporation, company, district, county, city and county, the state, and any of the agencies and political subdivisions of the state, or such entities" (Govt. Section 12640, "Environmental Actions").

CONCLUSION

Obviously, smog is a substance that falls under the category of hazardous contaminant, and the person, its streets and highways as sources, is guilty.

II

FUMES AND VAPORS CONSTITUTE TRESPASS

Trespass is unauthorized entry and occupation of land by another (Penal Section 601). "Every unauthorized entry on the property of another is a trespass" (Bauman v. Beaujean (1966) 244 Cal. App. 2d 385). California courts have held that entry on the property of fumes, vapors, dust or other harmful foreign matter constitutes an actionable trespass for which damages may be recovered. (Kornoff v. Kingsburg Cotton Oil co. (1955) 45 Cal. 2d 265, 268-75, 288 P. 2d 507; Roberts v. Permanente Corp. (1961) 188 Cal. App. 2d 526, 530-31, 10 Cal. Rptr. 519). Trespass may also be committed by consequential and indirect injuries. (Coley v. Hecker (1928) 216 Cal. 22, 28, 272 P. 1045; Smith v. Lockheed Propulsion Co. (1967) 247 Ca. App. 2d 774, 784, 56 Cal Rptr. 128; Gallin v. Polou (1956) 140 Cal. App. 2d 638, 641, 295 P. 2d 958). The County's streets and highways are obviously the source of vehicular fumes to the air spaces of adjacent properties and those in consequential line with them.

III

THE COUNTY MAY BE SUED FOR DAMAGES ARISING OUT OF A HAZARDOUS CONDITION OF ITS PROPERTY

CONDITIONS OF LIABILITY

> "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury wich occurred, and that....
>
> "The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition" (Govt. 835).

SMOG ORIGINATING ON COUNTY PROPERTY FULFILLS SUCH CONDITIONS

Plaintiff's Third Amended Complaint page 3, lines 6-29 and page 4, lines 1-15, explicity fulfill the conditions for stating a cause of action under Govt. 835.

CONCLUSION

During the last twenty-five years the County has made feeble efforts to control air pollution. The combined efforts of local, state, and federal officials, for example, have lead to a decrease of only 30% of excessive ozone in that period. Los Angeles currently has the worst air in the nation. Los Angeles County has until January, 1979 to submit a plan to meet Environmental Protection Agency standards, but the EPA, without even being asked, will allow further delay in meeting those standards until 1982.

The most prominent omission of EPA is that it overlooks carbon dioxide standards. For over thirty years scientists, without the publicity channels of government agents, have warned of the dangers of CO_2 buildup, and most recently have published evidence that in 10-20 years significant weather changes due to that factor will have become manifest. The catalytic converter increases carbon dioxide emissions.

It should be apparent that our lives are being threatened and it is our belief that the County, through the court system, is the best medium to obtain recourse. We

further believe that the ultimate rights of 18 per day here should not rest in the hands of a few appointed agencies with limited sanctions. And we believe that the best solution will be found by throwing the quest open to the public, using an open forum as described in the court order proposed in page 49 of the Clerk's Transcript. That making the public at large a voting member of the planning board is an eminently feasible matter is indicated by the TV system now in use in Columbus, Ohio, reported by the Time magazine article exerpted in the Appendix.

WHEREFORE, just cause appearing in behalf of plaintiffs, plaintiffs ask this Court to direct judgment in favor of plaintiffs.

March 3, 1978 Submitted,

James E. Richards

NOT FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA, JAMES RICHARDS, a resident of the County of Los Angeles, on behalf of himself, A Person,[sic] and all other such residents similarly situated, Plaintiffs and Appellants	)2d Civ. No. 52919)Sup. Ct. No.CA000218
vs.	
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, Defendants and Respondents	)

APPEAL from order of the Superior Court of Los Angeles County. Thomas W. LeSage, Judge. Affirmed.

James E. Richards, in Propria Persona, for Appellants.

No appearance for Respondents.

Plaintiff James Richards appeals from an order dismissing the above entitled action pursuant to Code of Civil Procedure Section 581.3 as to defendants County of Los Angeles and City of Los Angeles following the sustaining of a demurrer to his third amended complaint without leave to amend.

By this action Richards, on behalf of himself and others similarly situated, seeks a mandatory injunction to compel the evolution and adoption of a plan to end air pollution or in the alternative, damages, together with attorney's fees and costs of suit. The complaint was filed, the litigation processed and the appeal taken in propria persona and, for this reason, poses insurmountable problems of procedural and substantive law.

We have been furnished with a record containing copies of the third amended complaint, plaintiff's opposition to the demurrer,

a minute order sustaining a demurrer to the second amended complaint, the order of dismissal and notice of appeal. The record, as designated by plaintiff, does not contain a copy of the demurrer to any of the complaints, the minute order sustaining the demurrer to the third amended complaint or other information essential to appellate review of the matter. The briefing lends little, if any, assistance in enabling us to comprehend the theory of the litigation or the propriety of the action taken in the court below. As was said in Weiss v. Brentwood Sav. & Loan Assn. (1970) 4 Cal. App. 3d 738, 746:

> "With, at times, well-controlled exasperation appellate courts have pointed out that when an appellant claims error occurred in the trial court, he must present a record disclosing the error relied upon and enabling an appellate court to review and correct it. He has the burden of producing a record which overcomes the presumption of validity favoring a judgment or order. People v. Wilkins (1959) 169 Cal. App. 2d 27, 31 [386 P.2d 540]; Altman v. Poole (1957) 151 Cal. App. 2d 589, 593 [312, P.2d 6]; Lerno v. Obergfell (1956) 144 Cal. App. 2d 221 [300 P.2d 846]."

Nevertheless, in conformity with the established policy of this court to hear and dispose of appeals on their merits whenever possible, we have augmented the record on appeal to include the superior court file in People v. County of Los Angeles, No. CA 000218 in an effort to rectify defects in the record filed with this court. (Rule 12a Cal. Rules of Court.)

Our examination of the record as augmented discloses that on March 17, 1976, the trial court sustained the demurrer of the County of Los Angeles to the third amended complaint without leave to amend on the grounds set forth in the moving papers. The demurrer was made upon the grounds that the complaint failed to state a cause of action and was ambiguous and unintelligible. The points and authorities in support thereof are directed primarily at the failure to allege compliance with the Government Code Sections 905, 945.4 and 950.2 pertaining to presentation of claims to a public entity as a prerequisite to maintenance of the action.

We have examined the seven causes of action of this complaint and find the only allegation regarding the filing of claims to be in the first and second causes of action and not incorporated by reference in any of the

others. The allegation reads as follows: "In compliance with Govt. Code Section 945.4 requiring claims to be filed prior to action against county, on December 24, 1974, January 22, 1975, and February 28, 1975, a total of 331 claims were filed with the Board of Supervisors on this matter and selected copies are already on file herein. Yet damages have occurred, are still occuring, and will continue to occur unless certain action is taken by this court."

Plaintiff's timely filing of a claim containing the information required by Government Code Section 910 is a prerequisite to the maintenance of an action against a public entity for money damages. (C.A. Magistretti Co. v. Merced Irrigation Dist. (1972) 27 Cal. App. 3d 270, 274-275.) In the instant action plaintiff's failure to allege his timely filing of such claim and its rejection rendered the third amended complaint ineffective and the demurrer thereto was properly sustained, at least insofar as damages are concerend. A claim is unnecessary where the complaint only seeks an injunction.

However, we note that the demurrer was also grounded upon the complaint being uncertain, ambiguous and unintelligible and was also sustained on those grounds. We

agree that such is the case and that plaintiff's inability to state his causes of action in form and substance calculated to advise the court of legally sufficient causes of action after three amended complaints also justified dismissal of the action without leave to amend. (Cf. Hills Trans. Co. v. Southwest Forest Industries, Inc. (1968) 266 Cal. App. 2d 702, 709.)

The order of dismissal is affirmed.

NOT FOR PUBLICATION.

ALLPROT, J.

We concur:

COBEY, Acting P.J.

POTTER, J.

I have read Government Code Section 835.

I have read the plaintiff's Third Amended Complaint, Second Cause of Action, entitled "Dangerous Condition of Public Property."

I believe the Second Cause of Action alleges sufficient facts to constitute a cause of action against the County of Los Angeles under the conditions set forth in Government Code Section 835

(from originals: Lillian H. Houck
12-2-78
2021 Santa Monica Bl
Santa Monica, CA

Marjorie F. Houck

Sharon Lyford

Jim Coleman

Annie F. Amedeo 12-2-78

Jose C. Gonzalez 12117 W. Pico W. Los Angeles, CA)

R. Gonzalez

James F. Coleman

Los Angeles, Cal. NOV 16 1978, 19

TITLE { People of the State of California, James E. Richards, County of Los Angeles } No. 52919

THE COURT:

Petition for rehearing denied.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

DEC 20 1978

I have this day filed Order

REHEARING DENIED

In re: 2 Civ. *No.* 52919

People

vs.

County of Los Angeles

Respectfully,

G. E. BISHEL
Clerk

63421-677 6-78 4M OSP

IN THE
SUPREME COURT OF THE UNITED STATES
Spring Term, 1979

PEOPLE OF THE STATE OF CALIFORNIA,
JAMES E. RICHARDS, et al, etc.

v.

COUNTY OF LOS ANGELES

Certificate of Service

I hereby certify that on this 3rd day of April, 1979, 3 copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to William D. Ross, Deputy County Counsel, 500 W. Temple, Los Angeles, CA 90012, and 1 copy to the Attorney General, Sacramento, CA.

James E. Richards
49 Sunset #1
Venice, CA 90291
Pro Se